

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Redcats

Serial No. 75/557,635

John S. Egbert of Harrison & Egbert.

Joanna Mateja, Trademark Examining Attorney, Law Office 109
(Ronald R. Sussman, Managing Attorney).

Before Hanak, Bucher and Rogers, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Redcats (applicant) seeks to register in typed drawing form
SOFT GREY for "wearing apparel for men, women and children,
namely, shirts, pants, sweaters, socks, jackets, dresses, coats,
hats, scarves, gloves, underwear, shoes and slippers." The
intent-to-use application was filed on September 22, 1998.

Citing Section 2(e)(1) of the Trademark Act, the Examining
Attorney has refused registration on the basis that applicant's
mark is merely descriptive of applicant's goods. When the
refusal to register was made final, applicant appealed to this
Board. Applicant and the Examining Attorney filed briefs.
Applicant did not request a hearing.

As has been stated repeatedly, "a term is merely descriptive if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods." In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978); Abercrombie & Fitch Co. v. Hunting World, Inc., 537 F.2d 4, 189 USPQ 759, 765 (2nd Cir. 1976). One quality or characteristic of any product is its color, and it has been held that if a term names the color of the goods for which registration is sought, the term is merely descriptive of the goods. Ferro Corp. v. SCM Corp., 219 USPQ 346 (TTAB 1983); In re Champion International Corp., 183 USPQ 318 (TTAB 1974). Finally, it should be noted that the descriptiveness of the term is not decided in the abstract, but rather is decided in relationship to the goods for which registration is sought. Abcor Development, 200 USPQ at 218.

At the outset, it should be noted that "grey" and "gray" are variations of the same word. Random House Webster's Dictionary (2001). Moreover, at page 3 of its brief applicant concedes that "the term GREY is a variation of the more common term 'Gray' which is used to describe the color of 'between black and white.'"

In support of her refusal, the Examining Attorney has made of record a plethora of news stories and advertisements wherein the term "soft gray" is used to name a particular color of a

wide array of goods, including apparel. For example, an article from the February 12, 1998 edition of The Baltimore Sun describes an individual who "wears greens [and] soft grays." In another article from the March 1, 1998 edition of The Boston Globe there is a description of "wool [that] still comes from Maine sheep, and their soft gray, white, brown, and black fleece provide the natural hues." Another article from the March 15, 1998 edition of The Atlanta Journal and Constitution recommends that one "combine a pair of soft gray trousers or shirt with a white or khaki jacket." An article appearing in the February 18, 1999 edition of The Houston Chronicle talks of designers who favor complicated colors such as "soft gray - blues and pale off-pinks and silvery greens and nacreous beiges."

In addition to making of record numerous news stories and advertisements wherein the term "soft gray" describes a wide array of products including in particular apparel, the Examining Attorney has also made of record a definition of the word "soft" which is as follows: "not brilliant or glaring; subdued; soft colors." The American Heritage Dictionary of the English Language (3rd ed. 1992).

In light of the foregoing, we find that an ordinary consumer, upon seeing the phrase "soft grey" on wearing apparel such as shirts, pants and sweaters, would immediately understand that the term "soft grey" describes the color of the various

articles of apparel. Accordingly, we affirm the refusal to register.

In arguing that "soft grey" is not merely descriptive of its apparel, applicant argues that while some of its apparel items will be gray, many of its items of apparel will be of other colors. (Applicant's brief pages 2 and 9). We find this argument to be most unpersuasive. By applicant's logic, one could register the word "white" for shirts simply by arguing that it would use the word "white" on shirts that are colored blue, gray, pink and so forth.

Applicant also argues at page 3 of its brief that while the words "'soft' and 'grey' ... are each common words used in everyday language ... , the combination formed by the union of these two terms renders the mark either suggestive or distinctive of the goods." Applicant's argument is without merit given the plethora of news stories and advertisements made of record by the Examining Attorney wherein the combination term "soft gray" is used to describe the color of a wide array of goods, including in particular apparel.

Finally, applicant argues at pages 6 and 7 of its brief that "the term GREY has an abundance of meanings to the average consumer, including but not limited to, to grow old or age, the southern confederacy in the Civil War, something that is in the middle or a 'grey area,' in a person's sad disposition." As

stated earlier in this opinion, the descriptiveness of a term is not decided in the abstract, but rather is decided in relationship to the goods for which registration is sought. Abcor Development, 200 USPQ at 218. When a consumer sees the term "soft grey" on apparel he or she will readily understand that the term names the color of the item of apparel, and does not conjure up images of growing old or the Civil War.

Decision: The refusal to register is affirmed.